

AMENDED IN SENATE APRIL 15, 2010

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 1113

Introduced by Senator Wolk

February 17, 2010

An act to amend Sections 19048, 19334, and 19346 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1113, as amended, Wolk. Franchise Tax Board: tax administration: ~~tax appeals~~ *determinations*.

Under existing law the State Board of Equalization serves as a ~~quasi-judicial~~ *the appellate* body for ~~deciding appeals~~ *disputes arising* from actions of ~~both the Franchise Tax Board and the State Board of Equalization~~. If a taxpayer disagrees with the decision of the State Board of Equalization, that taxpayer may, after payment of the disputed tax liability, ~~appeal the final decision of the board by filing a claim for refund~~ *file an action* with the superior court in any city or city and county in which the Attorney General has an office. ~~Existing law does not specifically authorize the Franchise Tax Board to appeal a final decision of the State Board of Equalization.~~

This bill would, for determinations issued by the State Board of Equalization on or after January 1, 2011, authorize the Franchise Tax Board to bring an action for a trial de novo in superior court to determine the deficiency amount, the amount of refund or credit, or allowance of interest that was the subject of the determination of the State Board of Equalization, *where the amount of the deficiency, overpayment, or disallowance of interest exceeds \$100,000 for taxpayers subject to tax imposed under the Personal Income Tax Law, or \$1,000,000 for*

taxpayers subject to tax imposed under the Corporation Tax Law. This bill would also authorize a taxpayer to file a motion to change the venue to a venue closer to the taxpayer's principal residence or principal place of business.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 19048 of the Revenue and Taxation Code
2 is amended to read:

3 19048. (a) ~~The~~ *Except as provided in subdivision (b), the*
4 board's determination becomes final upon the expiration of 30
5 days from the time of the determination unless within the 30-day
6 period the taxpayer or the Franchise Tax Board files a petition for
7 rehearing with the board. In that event the determination becomes
8 final upon the expiration of 30 days from the time the board issues
9 its opinion on the petition.

10 (b) (1) Notwithstanding any other provision of law, within 90
11 days after the determination of the board ~~becomes~~ *would otherwise*
12 *have become* final, the Franchise Tax Board may file a suit in
13 superior court to determine the deficiency. A suit in superior court
14 to determine a deficiency shall be a trial de novo by the court as
15 to law and facts, there shall be a rebuttable presumption that the
16 notice of action of the Franchise Tax Board with respect to the
17 protest of a proposed deficiency assessment is correct, and the
18 taxpayer shall have the burden of proof that the notice of action
19 of the Franchise Tax Board is incorrect.

20 (2) Any action filed by the Franchise Tax Board under this
21 subdivision shall be commenced and tried in any city or city and
22 county in which the Attorney General maintains an office. A
23 taxpayer may file a motion to change the venue of any suit filed
24 under this subdivision to a venue closer to the taxpayer's principal
25 residence or principal place of business and the motion shall not
26 be opposed by the Attorney General or the counsel for the
27 Franchise Tax Board.

28 ~~(3) The amendments made to this section by the act adding this~~
29 ~~paragraph~~

30 (3) *This subdivision shall apply to determinations of the board*
31 *issued on or after January 1, 2011, where the amount of the*

1 *deficiency, including tax, additions to tax, penalties, interest,*
 2 *additional amounts, and fees, exceeds one hundred thousand*
 3 *dollars (\$100,000) for taxpayers subject to tax imposed under Part*
 4 *10 (commencing with Section 17001), or one million dollars*
 5 *(\$1,000,000) for taxpayers subject to tax imposed under Part 11*
 6 *(commencing with Section 23001).*

7 SEC. 2. Section 19334 of the Revenue and Taxation Code is
 8 amended to read:

9 19334. (a) ~~The~~ *Except as provided in subdivision (b), the*
 10 *determination of the board is final upon the expiration of 30 days*
 11 *from the date of the determination unless within the 30-day period,*
 12 *the taxpayer or Franchise Tax Board files a petition for rehearing*
 13 *with the board. In that event the determination becomes final upon*
 14 *the expiration of 30 days from the date the board issues its opinion*
 15 *on the petition.*

16 (b) (1) Notwithstanding any other provision of law, within 90
 17 days after the determination of the board ~~becomes~~ *would otherwise*
 18 *have become* final, the Franchise Tax Board may file a suit in
 19 superior court to determine the overpayment. A suit in superior
 20 court to determine an overpayment shall be a trial de novo by the
 21 court as to law and facts, there shall be a rebuttable presumption
 22 that the notice of action of the Franchise Tax Board with respect
 23 to the refund claim is correct, and the taxpayer shall have the
 24 burden of proof that the notice of action of the Franchise Tax Board
 25 is incorrect.

26 (2) Any action filed by the Franchise Tax Board under this
 27 subdivision shall be commenced and tried in any city or city and
 28 county in which the Attorney General maintains an office. A
 29 taxpayer may file a motion to change the venue of any suit filed
 30 under this subdivision to a venue closer to the taxpayer's principal
 31 residence or principal place of business and the motion shall not
 32 be opposed by the Attorney General or the counsel for the
 33 Franchise Tax Board.

34 ~~(3) The amendments made to this section by the act adding this~~
 35 ~~paragraph~~

36 (3) *This subdivision shall apply to determinations of the board*
 37 *issued on or after January 1, 2011, where the amount of the*
 38 *overpayment exceeds one hundred thousand dollars (\$100,000)*
 39 *for taxpayers subject to tax imposed under Part 10 (commencing*
 40 *with Section 17001), or one million dollars (\$1,000,000) for*

1 *taxpayers subject to tax imposed under Part 11 (commencing with*
2 *Section 23001).*

3 SEC. 3. Section 19346 of the Revenue and Taxation Code is
4 amended to read:

5 19346. (a) ~~The~~ *Except as provided in subdivision (b), the*
6 *determination of the board is final upon the expiration of 30 days*
7 *from the date of the determination unless within the 30-day period,*
8 *the taxpayer or Franchise Tax Board files a petition for rehearing*
9 *with the board. In that event the determination becomes final upon*
10 *the expiration of 30 days from the date the board issues its opinion*
11 *upon the petition.*

12 (b) (1) Notwithstanding any other provision of law, within 90
13 days after the determination of the board ~~becomes~~ *would otherwise*
14 *have become* final, the Franchise Tax Board may file a suit in
15 superior court to determine the disallowance of interest. A suit in
16 superior court to determine a disallowance of interest shall be a
17 trial de novo by the court as to law and facts, there shall be a
18 rebuttable presumption that the notice of action of the Franchise
19 Tax Board with respect to the disallowance of interest is correct,
20 and the taxpayer shall have the burden of proof that the notice of
21 action of the Franchise Tax Board is incorrect.

22 (2) Any action filed by the Franchise Tax Board under this
23 subdivision shall be commenced and tried in any city or city and
24 county in which the Attorney General maintains an office. A
25 taxpayer may file a motion to change the venue of any suit filed
26 under this subdivision to a venue closer to the taxpayer's principal
27 residence or principal place of business and the motion shall not
28 be opposed by the Attorney General or the counsel for the
29 Franchise Tax Board.

30 ~~(3) The amendments made to this section by the act adding this~~
31 ~~paragraph~~

32 (3) *This subdivision shall apply to determinations of the board*
33 *issued on or after January 1, 2011, where the amount of the*
34 *disallowance of interest exceeds one hundred thousand dollars*
35 *(\$100,000) for taxpayers subject to tax imposed under Part 10*
36 *(commencing with Section 17001), or one million dollars*
37 *(\$1,000,000) for taxpayers subject to tax imposed under Part 11*
38 *(commencing with Section 23001).*

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